

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 719

Sealing of Criminal Records

**SPONSOR(S):** Planas

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1276

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	_____	Cunningham	Kramer
2) Governmental Operations Committee	_____	_____	_____
3) Criminal Justice Appropriations Committee	_____	_____	_____
4) Justice Council	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Currently, criminal history records relating to certain offenses (these offenses are commonly referred to as "list offenses") in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication is withheld, may not be sealed.

This bill clarifies, in accordance with current law, that a criminal history record involving any of the "list offenses" may be sealed:

- If an indictment, information, or other charging document was not filed or issued;
- If a charging document was filed and the case was dismissed or a nolle prosequi was entered by the state attorney;
- If a charging document was filed and the case was dismissed by a court; or
- If a charging document was filed and the defendant was acquitted or found not guilty.

Current law states that a person seeking to have a record sealed must have never had a prior record sealed (or expunged). The bill provides that a person can have a record sealed even if they have had prior record(s) sealed so long as the past record(s) that were sealed were not related to offenses the person *pled guilty to* or *were found guilty of*.

This bill takes effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty → This bill provides that a person can have a criminal history record sealed even if they have had prior record(s) sealed so long as the past record(s) that were sealed were not related to offenses the person *pled guilty to or were found guilty of*.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 943.059, F.S., provides that courts have jurisdiction to maintain, seal, and correct judicial records containing criminal history information. Currently, any court may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with certain requirements.<sup>1</sup>

When a criminal history record is sealed<sup>2</sup>, it is confidential and exempt from the public records provisions of s. 119.07(1), F.S., and Art. I, s. 24(a), of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, and to certain specified agencies for their respective licensing and employment purposes.<sup>3</sup> Except as provided above, it is a first degree misdemeanor to divulge information relating to the existence of a sealed record.<sup>4</sup>

Persons petitioning to have their criminal record sealed must first obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE).<sup>5</sup> One of the criteria to receive a certificate of eligibility requires that an applicant must have never secured a prior sealing or expunction of a criminal history record.<sup>6</sup>

If the person meets certain statutory criteria and obtains a certificate of eligibility, he or she can petition the court to have his or her record sealed.<sup>7</sup> The court then decides whether sealing is appropriate.<sup>8</sup>

Criminal history records relating to certain offenses<sup>9</sup> (FDLE commonly refers to the offenses specified in this section as "list offenses") in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, *regardless of whether adjudication is withheld*<sup>10</sup>, may not be sealed.

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<sup>1</sup> s. 943.059, F.S.

<sup>2</sup> *Sealing* a criminal history record differs from having the record *expunged*. The *expunction* of a criminal history record requires that the record is physically destroyed. See s. 943.0585, F.S.

<sup>3</sup> s. 943.059, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

### Effect of Proposed Changes

The bill specifies, in accordance with current law, that a criminal history record involving any of the “list offenses” may be sealed:

- If an indictment, information, or other charging document was not filed or issued;
- If a charging document was filed and the case was dismissed or a nolle prosequi<sup>11</sup> was entered by the state attorney;
- If a charging document was filed and the case was dismissed by a court; or
- If a charging document was filed and the defendant was acquitted or found not guilty.

The bill also changes one of the requirements necessary to have any criminal record sealed. As noted above, current law states that a person seeking to have a record sealed must have never had a prior record sealed (or expunged). The bill provides that a person can have a record sealed even if they have had prior record(s) sealed so long as the past record(s) that were sealed were not related to offenses the person *pled guilty to* or *were found guilty of*. For example, under the bill, if an individual had a case *dismissed* 5 years ago and had that record sealed, that individual would be able to petition for another record seal for any new eligible criminal record. However, if the same individual *pled guilty* to the crime 5 years ago, they would not be permitted to petition for another record seal.

### C. SECTION DIRECTORY:

**Section 1.** Amends s. 943.059, F.S., providing that a prohibition against sealing certain criminal history records does not apply if a charging document is not filed, if the case is dismissed, if a nolle prosequi is entered, or if the defendant is acquitted or found not guilty; providing that a certificate of eligibility for sealing is available if the person seeking the certificate has never secured a prior sealing or expunction under specified provisions involving an offense for which he or she was found guilty or nolo contendere; makes grammatical/technical changes.

**Section 2.** This act takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

FDLE reported the following fiscal impact in their analysis<sup>12</sup>:

1. <b>Revenues:</b>	<u>(FY 05-06)</u>	<u>(FY 06-07)</u>	<u>(FY 07-08)</u>
Recurring	\$225,000.00	\$225,000.00	\$225,000.00
Non-Recurring	N/A	N/A	N/A
2. <b>Expenditures:</b>			
Recurring	\$38,381.00	\$38,381.00	\$38,381.00
Non-Recurring	\$10,600.00	N/A	N/A

<sup>10</sup> A withhold of adjudication is a manner of disposition in which the court does not pronounce a formal judgment of conviction. [http://www.flcourts.org/gen\\_public/pubs/bin/srsmanual/Glossary\\_2002.pdf](http://www.flcourts.org/gen_public/pubs/bin/srsmanual/Glossary_2002.pdf)

<sup>11</sup> A “nolle prosequi” is a declaration that the prosecutor in a criminal case will drop prosecution of all or part of an indictment. <http://dictionary.reference.com/>.

<sup>12</sup> FDLE states that an analysis of Criminal History Files shows that there are a potential 58,000 additional records for individuals who have already had a record sealed that could qualify for an additional seal application. If only 5% of the potential is realized over a year, the workload would increase by approximately 2900 application a year, which would require one additional specialist to process the applications. For purposes of this analysis, FDLE anticipates 3,000 additional applications x \$75.00 processing fee.

This would impact the overall volume of Applications for Certification of Eligibility requests for FDLE's Seal and Expunge Section. The number of certificates of eligibility issued would increase along with court orders for compliance and the need to modify additional judicial segments of the record.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 35-57 of the bill appear to restate current law. A careful reading of the current law reveals that only records in which someone was *found guilty* or *pled guilty* or *nolo contendere* would be precluded from being sealed. Thus, by implication, the law currently provides that if a charging document is not filed; or if a case was dismissed, a nolle prosequi was entered, or if a defendant was acquitted; the record could be sealed. It appears that the bill attempts to clarify when someone may have a record sealed. However, FDLE states in their analysis that the law, as presently written, should preclude any misinterpretation. FDLE is concerned that the bill raises the potential for misinterpretation and conflicting readings of the law.

If clarifying language is to be added to s. 943.059, F.S., FDLE suggested that the corresponding provision in the expunge statute (s. 943.0585, F.S.) should be amended.

As to the portion of the bill allowing multiple seals in certain instances, FDLE states that this is a major policy change in the state's approach to sealing records. Currently, a person may only seal or expunge a record *once* in their lifetime. This bill would allow a person to seal *multiple* records so long as the

record did not involve an offense for which the defendant was found guilty or pled guilty or nolo contendere to.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**